



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 11/20/01
AGENDA ITEM 3
WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: Finance and Internal Services Director
SUBJECT: Amendments to City's Deferred Compensation Plan

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution amending the City's Deferred Compensation Plan to reflect recent federal legislation.

BACKGROUND:

The Economic Growth and Tax Relief and Reconciliation Act of 2001 (EGTRRA) was signed into law on June 7, 2001. The new law allows plan sponsors to amend their qualified plans to provide valuable additional benefits to participants. The changes address such areas as the limit on employee contributions, which is increased, "rollover" or transfer options, which are enhanced and additional "catch up" contribution limits.

If the City's Deferred Compensation Plan (Plan) is amended to conform to federal law these options will be made available to Plan participants effective January 1, 2002. These changes represent additional options to the participants and the individual participant may or may not chose to exercise the option(s). As this is a deferred compensation plan funded with employee contributions there is no cost to the City if the Plan is amended to provide the new options contained in EGTRRA.

The City's Deferred Compensation Committee, (Committee), which is made up of City employees, has met and reviewed the aspects of EGTRRA that affect the City's plan. The plan's administrator has also been extremely helpful in providing information regarding the new law. Because of the recent adoption of EGTRRA there are still regulations to be issued by the Treasury Department. Until these regulations are issued it is not practical to fully amend the City's Deferred Compensation Plan. The attached resolution amends the plan to the new law for several specific provisions that will go into effect on January 1, 2002. Once the new federal regulations are issued, additional amendments will be presented to the Council for consideration.

Approval of the attached resolution will provide additional benefits to plan participants over the pre EGTRRA law. Among the most significant changes are the following:

Contribution Limit – In 2002 the standard “457” (refers to the Internal Revenue Code section that governs governmental deferred compensation plans) contribution limit will increase to \$11,000, from the current limit of \$8,500. This limit will increase by \$1,000 each year until 2006 and will be adjusted for cost-of-living thereafter.

Pre-Retirement Catch-Up Contribution – In 2002 the current rule permitting a \$15,000 catch-up contribution in a participant’s last three year years before retiring is increased to \$22,000.

Age 50+ Catch-Up Contribution – Starting in 2002, participants age 50 and older may contribute an additional \$1,000 in 2002 increasing to \$5,000 in 2006. This provision may not be used if the employee is making “pre-retirement catch-up contributions” noted above.

Direct Rollovers - Starting in 2002, plans must allow participants the opportunity to elect to rollover amounts in their 457 plan to other eligible retirement plans. These plans may be private employer plans or another governmental 457 plan.

Distribution for Certain Non-Participating Participants, Transfers In, Transfers Out – These sections deal with the cash out small account balances, (\$5,000 or less per the IRC) without the participant’s consent upon separation from service. This provision allows the plan to operate in a more efficient manner and to reduce administrative costs.

Trustee to Trustee Transfers to Purchase Permissive Service Credit – Starting in 2002, employees, where they have the right, may use funds from their 457 plans to purchase service credits under a governmental defined benefit plan.

If Council adopts the attached resolution then the City’s Plan will be able to offer the provisions discussed above to Plan participants January 1, 2002. Additional amendments will be presented in 2002 once the new federal regulations are issued.

Recommended by:

Perry H. Carter

Perry H. Carter, Director of Finance and Internal Services

Approved by:

Jesús Armas

Jesús Armas, City Manager

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**RESOLUTION ADOPTING AMENDMENT TO THE CITY OF
HAYWARD'S DEFERRED COMPENSATION PLAN**

WHEREAS, the City of Hayward (hereinafter "Employer") heretofore established the Deferred Compensation Plan (hereinafter "Plan"); and

WHEREAS, the Employer desires to amend the Plan to conform with changes in the federal law brought about by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"); and

WHEREAS, this amendment is intended as good faith compliance with the requirements of EGTRRA and guidance issued thereunder, and

WHEREAS, this amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

NOW THEREFORE, BE IT RESOLVED, that, effective January 1, 2002, the Employer hereby amends the Plan as follows:

"Contribution Limit – The maximum amount a Participant may defer during a calendar year to this and/or any other Eligible Deferred Compensation Plan shall not exceed the lesser of: (i) the applicable dollar amount as set forth in Section 457(e)(15) of the Internal Revenue Code; or (ii) 100% of the Participant's Includible Compensation.

Pre-Retirement Catch-Up Contribution – The maximum amount a Participant may defer under Section 457(b)(3) of the Internal Revenue Code each calendar year to this or any other Eligible Deferred Compensation Plan shall not exceed the lesser of: (1) twice the applicable dollar limit as set forth in Section 457(e)(15) of the Internal Revenue Code; or (2) the applicable dollar limit as set forth in Section 457(e)(15) of the Internal Revenue Code plus any Employer provided compensation eligible for deferral that was not deferred for any prior taxable year which began after December 31, 1978.

Age 50+ Catch-Up Contribution - All Participants who have attained age 50 before the close of the plan year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Internal Revenue Code. Such contribution

shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Section 457 of the Internal Revenue Code, or be taken into account in applying such limitations to other contributions or benefits under this Plan or any other plan. This provision shall not apply for any year in which Section 457(b)(3) of the Internal Revenue Code applies.

Rollover Contribution - An Employee may contribute a Rollover Contribution to the Plan. A Rollover Contribution is a Participant contribution or a direct rollover of an eligible rollover distribution as defined under Section 402(c)(4) of the Internal Revenue Code. The Plan Administrator may require the Employee to certify, either in writing or in any other form permitted under rules promulgated by the IRS, that the contribution qualifies as a Rollover Contribution under the applicable provisions of the Internal Revenue Code. If it is later determined that all or part of a Rollover Contribution was ineligible to be contributed to the Plan, the Plan Administrator shall direct that any ineligible amounts, plus earnings or losses attributable thereto (determined in a uniform and nondiscriminatory manner) be distributed from the Plan to the Employee as soon as administratively feasible. Separate accounting shall be maintained by the Plan Administrator for any Rollover Contribution not attributable to an Eligible Deferred Compensation Plan. Rollover Contributions will be nonforfeitable at all times.

Distribution Eligibility - All references to "separation from service" contained in the Plan are hereby replaced with "severance from employment."

Installment Payments - Upon becoming eligible for a distribution, a Participant may elect to receive so much of his or her Participant Account in installment payments made at least annually. A Participant may elect to vary the amount or frequency of any such payments at least once each calendar quarter. However, at no time may the installment payment period exceed the Participant's life expectancy.

Distribution On or After Age 70-1/2 or Severance From Employment - Upon becoming eligible for a distribution, a Participant may elect to commence distribution of his or her Participant Account in accordance with the payment options available under the Plan. A Participant who wishes to receive a distribution must submit a request to the Plan Administrator. Upon a valid request, distribution will commence as soon as administratively feasible.

Distribution On Account of the Participant's Death - In the event of the Participant's death, if distribution has not commenced prior to the death of the Participant:

a non-spousal beneficiary must either;

- (i) elect a distribution payable over a period not extending beyond the life expectancy of the beneficiary, commencing no later than the end of the calendar

year following the calendar year in which the Participant died; or

- (ii) elect a single-sum payment to be made no later than the end of the calendar year which contains the fifth anniversary of the date of death of the employee, otherwise, such single-sum payment shall be made by the end of such calendar year.
- (b) a spousal beneficiary may elect a single-sum payment or a distribution payable over a period not extending beyond the life expectancy of the spousal beneficiary. Distribution to the spousal beneficiary must commence on or before the later of: (i) the calendar year immediately following the calendar year in which the Participant died; or (ii) the year the deceased Participant would have reached age 70-1/2.

Minimum Distribution Requirements - Notwithstanding anything in this plan to the contrary, distribution from the Plan shall commence and be made in accordance with Section 401(a)(9) of the Internal Revenue Code and, until the last calendar year beginning before the effective date of the final regulations under section 401(a)(9) or such other date as may be published by the Internal Revenue Service, the regulations under section 401(a)(9) that were proposed on January 17, 2001. Participants must commence distribution no later than April 1st following the later of (i) the calendar year in which the Participant attains age 70-1/2 or (ii) the calendar year in which the Participant retires.

Domestic Relations Orders - No benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily pursuant to a domestic relations order, unless such order is determined to be a qualified domestic relations order, as defined under Section 414(p) of the Internal Revenue Code.

Direct Rollovers - A distributee may elect to have all or any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the distributee.

For purposes of this section an Eligible Rollover Distribution means any distribution of all or any portion of the balance to the credit of the distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; or any amount that is distributed on account of hardship.

For purposes of this section an Eligible Retirement Plan means an eligible retirement plan that is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code

which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, an annuity contract described in section 403(b) of the Internal Revenue Code, or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined under section 414(p) of the Internal Revenue Code.

For purposes of this section, a distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined under Section 414(p) of the Internal Revenue Code, are distributees with regard to the interest of the spouse or former spouse.

For purposes of this section a Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the distributee.

Distribution for Certain Non-Participating Participants – Rollover Contributions are excluded in determining whether the total amount of a Participant's Account under the Plan exceeds the dollar limit under Section 411(a)(11)(A) of the Internal Revenue Code.

Transfers In - If a transfer is associated with a distributable event and the Employee is eligible to receive an eligible rollover distribution as defined under Section 402(c)(4) of the Internal Revenue Code, such transfer will be considered a Rollover Contribution.

Transfers Out - If a transfer is associated with a distributable event and the distribution is an eligible rollover distribution as defined under Section 402(c)(4) of the Internal Revenue Code, such transfer will be considered a Direct Rollover.

Trustee to Trustee Transfers to Purchase Permissive Service Credit – A Participant may elect to have all or a portion of a his/her Participant Account directly transferred to a defined benefit governmental plan (as defined under Section 414(d) of the Internal Revenue Code) if such transfer is:

- (a) for the purchase of permissive service credit (as defined under Section 415(n)(3)(A) of the Internal Revenue Code) under such plan; or
- (b) a repayment to which Section 415 of the Internal Revenue Code does not apply by reason of subsection (k)(3) thereof."

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2001

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward